specifically as follows: claim 46 – claims 1-17 and 31-33, and throughout the specification, for example, page 4, line 28 to page 6, line 3; claim 47 – page 5, lines 17-22, claims 48-50 – claims 23, 24 and 25 as filed, respectively; claim 51 – page 5, lines 4-14; claims 52-55 – claims 14-17 as filed, respectively; claims 56-58 – page 10, lines 1-21. No new matter is added. Therefore, consideration of the claims is believed to be merited and is respectfully requested.

ELECTION

Applicants request that the restriction requirement be reconsidered because the Examiner has not shown that a serious burden would be required to examine claims from more than one group. M.P.E.P. § 803 provides:

If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions. (*Emphasis added.*)

Thus, for a restriction requirement to be proper, the Examiner must satisfy the following two criteria: (1) the existence of independent and distinct inventions (35 U.S.C. § 121); and (2) the search and examination of the entire application cannot be made without serious burden. *See* M.P.E.P. § 803.

In particular, the Examiner has not shown that the *second* requirement has been met. Specifically, the Examiner has not shown that it would be a serious burden to search and

examine the claims of groups II, III, IV, V, XV, XVI, XVII together with group I. Since all of the claims in these groups require and AAV5 nucleic acid, a search focused on AAV5 nucleic acid and nucleic acids encoding AAV5 proteins should identify all of the relevant art, regardless of the activity being screened for. Therefore, there is not serious burden to search these groups together. Because little or no additional burden would be required to search and examine these groups together, applicants respectfully submit that the groups should be searched and examined together. For these reasons, reconsideration and withdrawal of the restriction requirement is requested.

New vector claim 46 is a generic claim, written in Markush format, that encompasses all of species recited in claims 1-12 and 47-58, which now depend from claim 46. Because, claims 1-12 and 44-58 relate to claim 46 as species to a genus, all of claims 1-12 and 46-58 are not properly subject to a restriction requirement. If an elections is believed by the Office to be necessary, only an election of specie would be proper as to claims 1-12 and 46-58. Thus applicants believe that claims 1-12 and 46-58 should be examined together.

If an election of species from among claims 1-12 and 47-58 be required, applicants provisionally elect the species of group I (claims 1-12). It is understood that if generic claim 46 is found to be free of the art, the Examiner's search will be extended to a reasonable number of additional species.

Applicants note that MPEP 803.04 states that the Office will normally search up to 10 unrelated sequences in a single application. The MPEP mentions exceptions to this "10

sequence" rule, but none of them apply to the present circumstances. Thus, even if the Office does not accept the validity of the applicants position based on genus-species considerations, applicants respectfully submit that the Office's own internal procedures call for examination of 10 of the sequences recited in the claims as filed. In that case, applicants respectfully request examination of at least 10 sequences.

Should the Office not accept the validity of either of the above positions, applicants provisionally elect Group I with traverse.

A payment in the amount of $920.00 (3 month extension of time fee for large entity) is to be charged to a credit card and such payment is authorized by the signed, enclosed document entitled Credit Card Payment Form PTO-2038. This amount is believed to be correct; however, the Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 14-0629.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231, on the date shown below.

Gwendolyn D. Spratt — 7-25-02
Gwendolyn D. Spratt — Date

Version With Markings Showing Changes Made

In the Specification

On page 7, the following paragraph has been amended as follows:

Figure 2 shows AAV2 and AAV5 vector and helper complementation. Recombinant AAV particles were produced as previously described using a variety of vector and helper plasmids as indicated the bottom of the graph. The vector plasmids contained the Bgal gene with and RSV promoter and flanked by either AAV2 ITRs (2ITR) or AAV5 ITRs (5ITR). The helper plasmids tested contained either AAV2 Rep and cap genes (2repcap) or AAV5 rep and cap genes with or without an SV40 promoter (5repcapA and 5repcapb respectively) only the AAV2 rep gene (2rep) in varying amounts (1) or (.5) or an empty vector (pUC). The resulting AAV particles were then titered on cos cells. AAV particles were only produced when the same serotype of ITR and Rep were present.

On page 47, please replace the paragraph beginning on line 29 with the following:

Primary neonatal rat brain explants were prepared as previously described (Scortegagna et al. Neurotoxicology. 1997; 18 (2): 331-9). After 7 days in culture, cells were transduced with a similar number of particles of rAAV5 containing a nuclear localized β-gal transgene as previously described. After 5 days in culture, the cells were stained for β-gal activity following the procedure of (Chiorini et al. 1995 HGT Vol: 6 1531-1541). As shown in Figure 9, transduction was detected in a variety of cell types including astrocytes, neuronal [cels] cells and glial cells.

In the Claims

1. (Amended) A nucleic acid vector of claim 46, comprising a pair of adeno-associated virus 5 (AAV5) inverted terminal repeats and a promoter between the inverted terminal repeats.

2. (Amended) The nucleic acid vector of claim 1, wherein the promoter is an AAV promoter p5.

3. (Amended) The nucleic acid vector of claim 1, wherein the p5 promoter is AAV5 p5 promoter.

4. (Amended) The nucleic acid vector of claim 1, further comprising an exogenous nucleic acid functionally linked to the promoter.

5. (Amended) The nucleic acid vector of claim 1, encapsidated in an adeno-associated virus particle.

30. (Amended) The nucleic acid of claim [29] 46, having the nucleic acid sequence set forth in SEQ ID NO:7.

31. (Amended) The nucleic acid of claim [29] 46, having the nucleic acid sequence set forth in SEQ ID NO:8.

32. (Amended) The nucleic acid of claim [29] 46, having the nucleic acid sequence set forth in SEQ ID NO:9.